

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL FRANCIS ASTLEY,

Defendant-Appellant.

UNPUBLISHED
November 2, 1999

Nos. 210661; 211686
Tuscola Circuit Court
LC No. 97-007229 FH

Before: Collins, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of resisting and obstructing a police officer in the discharge of duty. MCL 750.479; MSA 28.747. The trial court sentenced him to serve ninety days in jail on each count. Defendant appeals as of right. We affirm.

Defendant argues that the trial court erred in refusing to instruct the jury that a person may resist an illegal arrest and to instruct on what constitutes a legal arrest pursuant to CJI2d 13.5. We disagree. This Court reviews jury instructions in their entirety to determine whether the trial court committed error requiring reversal. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997). Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them. *Id.* There is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. *Id.*

Defendant was charged with resisting and obstructing officers engaged in maintaining the peace. In *People v Daniel Rice*, 192 Mich App 240, 241-242; 481 NW2d 10 (1991), the defendant was charged with obstructing an officer in the discharge of his duty to maintain, preserve, and keep the peace. *Id.* at 241-242. There, as in this case, the defense at trial was that the defendant's subsequent arrest was illegal and, therefore, his resistance was justified. *Id.* at 242-243. However, this Court observed that while the lawfulness of an arrest is a necessary element of the crime of resisting arrest, the defendant was not charged with resisting arrest. *Id.* at 243. Although the *Rice* Court did not specifically conclude that the trial court erred in giving the instruction regarding a defendant's right to resist an unlawful arrest, the tenor of the decision clearly implies that conclusion. Since defendant in this case was not charged with resisting and obstructing arrest, the lawfulness of his arrest was not an issue

at trial. Consistent with *Rice*, therefore, we conclude that defendant was not entitled to an instruction on the right to resist an illegal arrest, or an instruction regarding what constitutes a legal arrest under CJI2d 13.5. Furthermore, upon reviewing the court's instructions in their entirety, we conclude that they fairly presented the issues for trial and sufficiently protected defendant's rights. *Piper, supra*.

Affirmed.

/s/ Jeffrey G. Collins
/s/ David H. Sawyer
/s/ Mark J. Cavanagh